IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8269 OF 2006

Shanta W/o. Anant Ubhaya : Petitioner

V/s.

Jadavkumar Liladhar Mainthia & Ors. : Respondents

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Mr.Naidu i/b. Mr.S.K.Jagdish for the petitioner.

Mr.V.P.Savant for respondent no.1.

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CORAM : S.A.BOBDE, J.

DATE : JULY 12, 2007.

P.C.

Rule, returnable forthwith.

Heard by consent.

2. By this petition, the petitioner has challenged the order rejecting her application for setting aside the ex parte decree which was passed on 17.1.1995. The impugned order is passed on 30.7.1996.

3. Suit no.441/964 of 1993 was filed by the respondent against the petitioner on 24.6.1993. Ex parte decree was passed on 17.1.1995. The petitioner applied for setting aside the ex parte decree on 16.1.1995. That application for setting aside was rejected on 30.7.1995. Thereafter,

the petitioner preferred Appeal no.462 of 1996 to the Bench of the Court of Small Causes. This appeal was dismissed on 18.2.1999. This petition has been filed in this Court on 5.12.2006.

4. Mr.Savant, the learned counsel for the respondent no.1, raised a serious objection about the delay in filing this petition.

5. As regards the explanation for the delay, admittedly, the only sentence in the petition is in paragraph 36 which reads as follows:-

> "36) The Petitioner humbly submits that the lawful tenant is very advanced in age which delicate state of health and is not a earning member, and a widow therefore, the delay if any may kindly be condoned in the interests of justice."

6. Mr.Naidu, the learned counsel for the petitioner, however, relied on the judgment of the Supreme Court in Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others [(1987) 2 SCC 107] wherein the Supreme Court stated that the question of delay must be considered from the point of substantial justice.

Moreover, the learned counsel relied on two other decisions reported in (2007) 4 S.C.C. 221 and AIR 1994 S.C. 853 on the ground that where there is a fraud practiced by one of the parties, it must be gone into by the Court since it vitiates everything. With respect, there is no dispute about this proposition. However, the question which is being considered in this case is the justification of the delay in approaching this Court by way of a Writ Petition. There is no pleading that because of the fraud allegedly practiced by the respondent and because of the discovery of the fraud, the petitioner filed this petition belatedly. The allegations of fraud have not been shown to have any bearing on the delay of about seven years after the appellate Court rejected the petitioner's appeal on 18.2.1999. In the absence of any proper explanation for delay, I am not inclined to entertain this Writ Petition which is liable to be dismissed. However, it must be noted that the allegations of fraud have not been gone into because admittedly the fraud has not been set up as the reason for approaching this Court after a long gap of about seven years.

7. In the circumstances, the Writ Petition is dismissed.

8. In view of the dismissal of the Writ Petition, Civil Application Nos.1043 of 2007 and 1417 of 2007 do not

survive and the same stand disposed of.

S.A. BOBDE, J.